THE PRINCE LINE LTD. & ORS. v. SINGAPORE HARBOUR BOARD

[O.C.J. (Buttrose J.) March 4, 1960]

[Singapore — Suit No. 29 of 1955]

Negligence — Fire caused by sparks and molten metal falling — Acts contravening specific instruction — Conduct amounting to negligence — Damages.

This action arose out of a fire which occurred on board the M.V. "Javanese Prince" while working cargo alongside the wharves of the defendants who had undertaken to carry out certain repairs to the vessel. As a result of the fire cargoes of kapok and sugar belonging to the 2nd, 3rd and 4th plaintiffs were damaged as was also the vessel and her sailing was delayed.

The plaintiffs' case was that in burning off the section of the smoothering pipe at deck level some incendiary matter fell on to the kapok underneath and ignited it and that the defendants were negligent in that they failed to ascertain whether it was safe to use burning equipment and failed to exercise due care or take proper precautions with regard to its use.

The defendants contended that the fire was not caused by the burning operation to the smoothering line at all, or if it was, then they were not negligent and the fire was solely attributable to the negligence of the plaintiffs.

It was urged for the plaintiffs that the only reasonable explanation of the fire breaking out was the sparks and particles of molten metal dropping on to the bales of kapok through the hole in the deck when the smoothering pipe and collar were being cut at deck level by the oxy-acetylene burner.

Held: (1) the inference to be drawn from the facts was that the fire was caused by sparks and molten metal falling on to the kapok as a result of the defendants' burning operations;

(2) the defendants were negligent in that they failed to take special care to prevent injury to persons or property, while carrying out an operation involving the use of fire;

(3) also, in burning off the smoothering pipe the defendants were acting in direct contravention of the specific instruction given to them by the Chief Officer. In the circumstances their conduct amounted to negligence sufficient, to entitle the plaintiffs to recover;

(4) the plaintiffs were entitled to recover damages.

Cases referred to:—

(1) *Gibson & Co. Ltd.* v. *Grangemouth Dockyard Co. Ltd.* (1928), 30 Ll.L.R. 65.

(2) *Nautilus Steamship Co.* v. *Henderson* [1919] Sessions Cases 605 at 610.

ACTION.

K. Gould for the plaintiffs.

C. H. Smith for the defendant.

Cur. Adv. Vult.

Buttrose J.: This action arises out of a fire which occurred on board the M.V. "Javanese Prince" on the 24th July 1954 while working cargo alongside the Singapore Harbour Board Wharves.

The 1st plaintiffs are the owners of the vessel which was carrying, *inter alia*, a cargo of kapok, the property of the 2nd and 3rd plaintiffs respectively and a cargo of sugar the property of the 4th plaintiff. The kapok was stowed in No. 5 Upper Tween Decks and the sugar immediately below it in No. 5 Cargo Hold. As a result of the fire both the kapok and sugar were damaged as was also the vessel and her sailing was delayed.

Before the vessel arrived in Singapore a list of repairs required to be done was forwarded through the ship's agents in Singapore to the Dockyard Manager of the Singapore Harbour Board — the defendants responsible for effecting them. Of these repairs only two are material to these proceedings. One was to a section of the main steam line in way of No. 4 aft port winch on the main deck and the other — the vital one — to a section of a steam smoothering line aft of the mast house. This smoothering line, which forms part of the vessel's fire fighting equipment, passes from a junction box on the main deck through the deck into No. 5 Upper Tween Decks and through a bulkhead into No. 4 Hold.

The vessel after its arrival on the 23rd of July 1954 was working cargo in No. 5 Hatch which gives access to No. 5 Upper Tween Decks where the kapok was stowed and also to No. 5 Hold where the sugar was stowed. A number of cases of Jelutong were loaded and stowed in No. 5 Upper Tween Decks alongside the kapok, which was stowed forward and clear of the square of the hatch, while the Jelutong was stowed aft. The working of the cargo continued until about 11 o'clock that night and No. 5 Hatch was closed and was not opened again until the following afternoon after the fire had been discovered.

Cargo work was continued on the 24th July but not at No. 5 Hatch and the repairs to the steam line in way of No. 4 aft port winch and to the steam smoothering line were also carried out. These necessitated the use of an oxy-acetylene burner by the defendants. There is a conflict of evidence as to when these repairs were done on the 24th July but it is, I think, common ground that the one to the smoothering line, at any rate, was done in the afternoon some time between 1 and 2.30 p.m.

This smoothering line or pipe was held at deck level by a steel collar to which the pipe was welded and the collar in turn was welded to the deck. A section of this pipe was cut out by the defendants' employees using an oxy-acetylene burner and it was cut at deck level below the covering of the junction box and the collar was also burnt off from the deck — all the burning being done above deck.

After the burning the cut end of the pipe was about level with the hole in the deck the pipe having a clearance of about a quarter of an inch. The hole in the deck was on the centre line of the ship almost directly above the forward bales of kapok stowed to within a very short distance of the underside of the deck.

At about 4.15 p.m. the same afternoon smoke was noticed coming from the ventilators to No. 5 Hold and from the underside of the hatch covers. The ships officers and crew immediately went into action and the Fire Brigade was summoned. No. 5 Hatch was opened and the kapok observed

to be on fire. Hoses were played on the burning cargo and after some half an hour the fire subsided and the discharging of the kapok began. By 7.30 p.m. all the apparent burning bales had been discharged and the remainder off-loaded before midnight.

The plaintiffs' case is that in burning off the section of the smoothering pipe at deck level some incendiary matter fell on to the kapok underneath and ignited it and that the defendants were negligent in that they failed to ascertain whether it was safe to use burning equipment and failed to exercise due care or take proper precautions with regard to its use.

The defendants on the other hand contend that the fire was not caused by the burning operation to the smoothering line at all, or if it was then they were not negligent and the fire was solely attributable to the negligence of the plaintiffs.

The parties have agreed that, in the first instance, the issue to be decided should be limited to the question of liability only and that the quantum of damages, if any, to which the plaintiffs are entitled should be determined by assessment or agreement at a later stage.

The first issue for decision is as to the cause of the fire.

The plaintiffs contend that the only reasonable explanation of the fire breaking out was the sparks and particles of molten metal dropping on to the bales of kapok through the hole in the deck when the smoothering pipe and collar were being cut at deck level by the oxy-acetylene burner.

The defendants while not bound to offer any suggestion as to the cause of the fire have propounded three theories.

They suggested that the fire was caused by: (1) spontaneous combustion; (2) a lighted cigarette end; or (3) sabotage.

I am satisfied on the evidence that the fire was in fact discovered a little over two hours after the burning operation on the smoothering pipe had finished by smoke being seen coming from the ventilators and the underside of the hatch covers, and that No. 5 hatch was fastened down at about 11.30 p.m. on the 23rd July and remained so fastened until after the fire. It is to say the least of it a most remarkable and, from the defendants' point of view, unfortunate coincidence that some two hours after this burning operation was carried out a fire broke out in some bales of kapok stowed directly underneath that portion of the deck where the smoothering pipe was burnt off.

But ignoring for the moment the question of coincidence, what are the facts which are established by the evidence. The use of the oxy-acetylene burner in cutting the smoothering pipe entailed intense heat projected with great force on to the pipe, collar and welding at deck level. This resulted in a shower of sparks spraying out and particles of molten metal falling and in the course of the cutting and as the fitting became loose there was a small space between the pipe and the deck through which it passed. I think it probable that this incendiary matter fell through this space on to the kapok below. That some of these particles of molten metal or other incendiary matter bounced off the jam nut just below the underside of the deck as they fell through and were deflected in various directions as indicated by Mr. Anderson is, so it seems to me, a reasonable and probable consequence.

I am satisfied that the space between the pipe and the deck existed and as the burning operation proceeded it became apparent and was observed when the first inspection was made. The evidence of Mr. Pancheri, who was on board when the fire was discovered, was that an inspection was made of No. 5 Tween Decks at about 6.30 p.m. while it was still light and he was able to see daylight between the pipe and the deck through which the pipe passed. Mr. Wiseman was also quite emphatic that he too saw this hole in the deck and light was visible through the aperture both on the 24th and 25th July. I accept the evidence of both these witnesses.

The light test which Mr. McCulloch said was carried out was conceded by Mr. Smith not to be infallible and in my view it was both unsatisfactory and unconvincing in the circumstances. It was a matter of vital importance to the defendants, and one would have expected Mr. McCulloch to call the immediate attention of all concerned to the fact that there was no aperture through which any incendiary matter could gain access to No. 5 Tween Decks. I find it difficult to believe that he would keep silent and make no mention of this important matter at the discussion in the Captain's Cabin, which took place on the morning of the 25th July, at which he was present, when a statement was made that smoke was said to be issuing from the burnt pipe.

Similarly, what has been described as the water test is, in my opinion, inconclusive and appears to me to be as consistent with the plaintiffs' case as with the defendants'. Mr. McCulloch's evidence was that he saw a very slight drip of water coming down through the deck where the pipe went through. If there had been a space the water would have poured through or at any rate penetrated in considerably greater volume than a mere drip. Now, Mr. McCulloch came on board at 4.30 p.m. and his evidence was that it was several hours later before he went down into No. 5 Tween Decks and observed this drip. At that time the hoses had ceased pumping, and while the decks would still be wet or damp, Mr. Pancheri denied that they were flooded with water when he went down into No. 5 Tween Decks at about 6.30 p.m. It must be borne in mind that the hole in the deck was in the centre of the vessel at the highest point of the camber with the deck sloping away on either side, which would throw the water off into the scuppers. In view of these circum-

stances, there is nothing in any way unusual or surprising in the fact that only a drip of water was seen coming through the aperture. Mr. Pancheri's evidence was that the whole of the pipe was rather wet, which would seem to indicate that when the hoses were playing on the deck a lot of water had entered through the hole and down the outside of the pipe.

It was further submitted on behalf of the defendants that confirmation of these tests being carried out, and their effectiveness, was supplied by the fact that no one saw any smoke issuing from the hole in the deck.

The Chief Officer was asked if he noticed smoke coming from anywhere else other than the ventilators and his reply was 'not that he could see under the circumstances of trying to fight a fire'. I do not attach any significance to the failure to observe smoke issuing through this small aperture in the deck. The main and urgent concern of the ship's officers and crew was to get the covers off No. 5 Hatch, from which smoke was issuing, ascertain the seat of the fire and deal with it. According to the plaintiffs' evidence no one on board was aware at that time that a section of the smoothering pipe had been burnt off. Furthermore, the decks were flooded with water within a very few minutes of the alarm being given and the water, as it penetrated into the hole in the deck, would tend to prevent any smoke issuing therefrom. The fact that there is no evidence that any one actually saw smoke coming from this small opening in the deck does not appear to me to be of any great moment in the circumstances.

There was no evidence whatever apart from the fire itself to support the suggestion of sabotage or smoking. Considerable reliance was placed by the defendants' Counsel on the case of *Gibson & Co. Ltd.* v. *Grangemouth Dockyard Co. Ltd.*[1] as being very similar to the present. In that case an oxy-acetylene plant was used when a stanchion was being replaced at the forward end of No. 3 Hold. In No. 2 Hold, which was immediately forward of where the 'defenders' were working, a cargo of jute was being loaded. To have caused the fire the sparks from the plant must have penetrated the interstices in the bulkhead direct and so reached and ignited the jute or drops of molten metal may have fallen from the plant to the ceiling i.e. the bottom of Hold No. 3 and ricochetted in scattered form through the bulkhead to the cargo of jute. As the Lord Justice-Clerk pointed out the first of these suggestions was negatived by the evidence while the second appeared to him to verge on the grotesque as it attributed to the metal an acrobatic energy and a capacity to retain heat which alike seem to be incredible. In this respect that case is clearly distinguishable from the present.

Furthermore, in that case there was a considerable body of evidence to the effect that one or more of the servants of the ship was smoking in Hold No. 3 in the course of the operations carried on there. There is no such evidence here and in fact the No. 5 Hatch covers were fastened down at about 11.30 p.m. on the 23rd July and not removed until after the fire was discovered — some seventeen hours later. If a cigarette or match had been dropped while working cargo at No. 5 Hatch it is inconceivable that burning kapok would not have been discovered before 4.15 on the afternoon of the 24th July, either by smoke being seen or smell of burning detected. Bearing in mind the seat of the fire in the forward bales of kapok it would have been extraordinarily difficult, if not impossible, for a cigarette to have been flicked or dropped in the vicinity of the two badly burnt bales of kapok.

The theory as to spontaneous combustion was discounted by Mr. Anderson and Captain Simpson, whose evidence I have no hesitation in accepting.

Mr. McLennan the present Dockyard Manager of the defendants frankly admitted that he was unable to think of any more likely or reasonable solution of the outbreak of the fire than the burning operation to the smoothering line.

I have come to the conclusion that the only reasonable inference, indeed the irresistible inference, to be drawn from the facts is that the fire was caused by sparks and molten metal falling on to the kapok as a result of the dependants' burning operation.

I turn now to deal with the question as to whether the defendants were negligent. It is well established that any one who carries out any operation involving the use of fire is under an obligation to take special care to prevent injury to persons or property. No precaution which is commercially practicable should be omitted and the highest degree of care is required.

The defendants' case was that the repairs in question were engine room repairs requested by the Chief Engineer. The defendants' representatives came on board and one of them went to the Chief Officer to obtain his signature to what has been termed the fire chit, a document indicating that an oxy-acetylene burner would be working on board. The other, the No. 1 fitter, went to the 2nd Engineer who told him what was required to be done and he went ahead and had it done. The defendants contend if these are the facts then there is no negligence and there was no duty imposed upon them to enquire what was underneath the deck through which the smoothering line came and which they cut at deck level, using an oxy-acetylene burner — a stand described by Lord Skerrington in *Nautilus Steamship Co.* v. *Henderson*[2] at p. 610 as both frank and audacious.

The defendants made no enquiries as to what was in No. 5 Tween Decks above which they were going to burn nor did they carry out any inspection. In failing to do so they omitted to take an elementary precaution and were, in my opinion, guilty of negligence for which they must take the consequences. In fact they took no precautions of any kind and having completed

the operation they went off without informing any one, leaving the cut end of the pipe open and exposed.

Mr. McLennan himself frankly admitted that to cut the pipe in the manner in which it was cut was dangerous and he would not have done it in that way and it could have been done with safety.

I am satisfied that the burning operations to a section of the steam line in way of No. 4 aft port winch and to the smoothering line were both carried out in the afternoon. I accept the evidence of the Chief Officer and Mr. Flavell on this matter, supported as it is by the log book and the probabilities of the matter. The log book entry, which speaks for itself, was made at 8 o'clock in the evening on the 24th July, not quite 4 hours after the fire was first discovered and when it could not have been in the contemplation of any one that anything was going to turn on the time the fire chit was brought.

The defendants' evidence on the matter was that the first burning operation was done at 8.30 a.m. on the 24th and it was completed by 9 a.m., while the second burning operation did not take place until after 1 p.m. and took but 10 minutes. I consider it highly unlikely and an altogether improbable circumstance that the burner would have stood by after the first operation and waited for over four hours merely to do a ten minute job.

I am also satisfied on the evidence that in burning off the smoothering pipe the defendants were acting in direct contravention of the specific instructions given to them by the Chief Officer and Mr. Flavell. The defendants' workmen were told to carry on with the first job and to do nothing else without reporting to Mr. Flavell and not to move to any other spot without informing him. Mr. Flavell then accompanied the workman to the site of the first job before it was commenced and this is corroborated by the burner Low Peng Hee. Mr. Flavell had a fire extinguisher placed in position and saw that a fire hose was rigged. He then went back to the work he had been doing of assisting with the cargo plans for No. 2 Hold. The defendants' workmen failed to report to Mr. Flavell after completing the first job but went ahead with the burning operation on the smoothering line. In the circumstances their conduct amounted to negligence sufficient, in my opinion, to entitle the plaintiffs to recover.

I am satisfied that no permission was given for the burning operation on the smoothering line to be carried out. I think the position was, as appears from the evidence of Mr. Anderson, that having completed the first job the fitter just told the burner to come along and burn off the pipe.

I have no doubt the 2nd Engineer would indicate to the fitter — who had various jobs to do — the repairs required at an initial survey of the work to be done. But so far as burning operations were concerned it was the Chief Officer whose permission was required and this was recognised by the defendants, who presented the fire chit to him for signature.

It is true that Mr. Flavell's evidence differs from the Chief Officer's as to whether he knew of the second burning operation or not and one or other of them is obviously but, I think, honestly mistaken. The Chief Officer may well have assumed that Mr. Flavell would have known but in any event it was never suggested that the instructions the Chief Officer gave contained any specific reference to the smoothering line. It was simply an order to do the first job and not to move away from it elsewhere or to another job without first reporting.

The fire was in no way attributable to negligence on the part of the first plaintiffs or their servants or agents.

In the result I find that the damage done to the vessel and cargo was due to the negligence of the defendants. The amount of damages to which the plaintiffs are entitled to be later determined by agreement or, in default thereof, by assessment by the Registrar.

The defendants must pay to the plaintiffs their costs of the action.

Judgment for the plaintiffs.

Solicitors: *Rodyk & Davidson; Donaldson & Burkinshaw.*

TAN GIOK HUE v. LIM SWEE PENG

[O. C. J. (Ong J.) March 30, 1960]

[Kuala Lumpur — Suit No. 275 of 1959]

Negligence — Onus of Proof — Res ipsa loquitur — Skid — Whether presumption of negligence is rebutted by showing blow-out of tyre.

A car hired by the defendant, was proceeding south from Kuala Lumpur towards Kajang when, after crossing a bridge the car suddenly swerved across the road, directly into the path of a truck which was coming from the opposite direction and which struck the car broadside on its left killing the plaintiff's husband. Evidence was adduced by the defendant that the accident was due to a skid as the result of a tyre blow-out. No other reason was given for the skid. The plaintiff as administratrix of the deceased claimed damages from the defendants on the ground that her husband's death was caused by the negligence of the defendant.

Held: (1) the fact that the car after crossing the bridge swerved suddenly across the road onto the opposite direction raised a presumption of negligence against the defendant requiring him to prove affirmatively that he had exercised reasonable care; to displace the presumption it was not sufficient for the defendant to show that the immediate cause of the accident was a skid due to a tyre blow-out, the blow-out could either be the cause of the skid or it could be the result of the collision. All the evidence and circumstances of this case indicated a blow-out after collision;

(2) the defendant had therefore not discharged the onus which rested on him of giving an explanation of the cause of accident which did not connote negligence on his part. Principle formulated by Asquith L.J. in *Barkway* v. *South Wales Transport Co. Ltd.*[3] applied.

[**Editorial Note:** The doctrine of *res ipsa loquitur* was also discussed and applied in *Menon* v. *Pigeonneau* [1957] M.L.J. 85, C.A.]